

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. C 12-00634 WHA

v.

RICARDO GUTIERREZ,

Defendant.

**ORDER RE ATTORNEY-CLIENT
PRIVILEGE**


In defendant's Section 2255 motion, he claims that his court-appointed counsel, Phillip Vaughns, provided him with ineffective assistance of counsel when he allegedly advised defendant to pursue a bench trial based on the necessity defense, rather than accept the government's plea deal. The government contacted Vaughns for a sworn declaration, but he refused to provide one absent a finding by the Court that defendant waived his attorney-client privilege by filing his Section 2255 motion (Dkt. No. 65).

Our court of appeals has held that when a defendant alleges ineffective assistance of counsel and calls his attorney's advice and counsel into question, he has necessarily waived the attorney-client privilege and a "court must impose a waiver [of the privilege] no broader than needed to ensure the fairness of the proceedings before it . . . [but] the holder of the privilege may preserve the confidentiality of the privileged communications by choosing to abandon the claim that gives rise to the waiver condition." *Bittaker v. Woodford*, 331 F.3d 715, 716, 720 (9th Cir. 2003); *United States v. Wang*, 2013 U.S. Dist. LEXIS 2886, at *1-2 (N.D. Cal. Jan. 7, 2013) (Judge Maxine Chesney).

1 Thus, defendant may have until **JANUARY 29, 2014, AT NOON** to file a notice that he
2 wishes to preserve his attorney-client privilege by abandoning his ineffective assistance of
3 counsel claim. If he does not so file, his attorney-client privilege will be deemed waived as to all
4 matters raised in his Section 2255 motion. If petitioner decides not to abandon his claim, the
5 government may have until **MARCH 6, 2014, AT NOON** to file an opposition to defendant's
6 Section 2255 motion, including a declaration by former counsel.

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8 **IT IS SO ORDERED.**

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10 Dated: January 13, 2014.

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13 WILLIAM ALSUP
14 UNITED STATES DISTRICT JUDGE
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